

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

HOUSEHOLD BANK, F.S.B.,	:	
	:	C.A. No. 03L-11-007 HDR
Plaintiff,	:	
	:	
v.	:	
	:	
MARIE H. DANIELS and	:	
DOROTHY CLARK,	:	
	:	
Defendants.	:	

Submitted: October 7, 2005

Decided: January 18, 2006

ORDER

Upon Defendants' Motion to Set Aside Judgment.
Granted.

Stephen P. Doughty, Esquire of Lyons Doughty & Veldhuis, P.A., Wilmington, Delaware; attorneys for Plaintiff.

Timothy J. Wilson, Esquire of Margolis Edelstein, Wilmington, Delaware; attorneys for the Defendants.

WITHAM, R.J.

Defendants, Marie Daniels and Dorothy Clark, filed a motion pursuant to Rule 60(b) to set aside a judgment that was entered on January 29, 2004. Defendants previously filed a motion to set aside a sheriff's sale, which this Court granted by an Order dated July 14, 2005. In that Order, this Court determined that Plaintiff, Household Bank, F.S.B., had not properly served Defendants notice of the sheriff's sale. Specifically, this Court concluded that "service on an unknown caretaker on the property and the fact that a first class mailing was not returned, does not constitute a sufficient effort to 'reasonably ascertain' the correct address of the record owner of the property."¹ In fact, it was the underlying *scire facias* action that was improperly served upon the caretaker.

For the reasons set forth below, Defendants' motion to set aside the judgment is *granted*.

Discussion

Superior Court Civil Rule 60(b) states, in relevant part, "[o]n motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment." In *Young v. Reynoso*,² this Court opined:

A motion to set aside a judgment pursuant to Rule 60(b) lies within the reasoned discretion of the Court. However, liberality is highly favored

¹*Household Bank, F.S.B. v. Daniels*, 2005 Del. Super. LEXIS 271.

²2001 Del. Super. LEXIS 280, at *4.

where the opening of default judgments is concerned because of a basic underlying policy preferring determination of an action on the merits.

One of the factors which the Court is called upon to consider in acting upon a motion to vacate default judgment is whether the defaulting party can demonstrate a meritorious defense to the underlying action.³ A second consideration is whether there will be substantial prejudice to the non-defaulting party if the motion to vacate is granted.⁴

In the case *sub judice*, Defendants pled four affirmative defenses, namely: (1) insufficiency of process, (2) failure to state a claim upon which relief may be granted, (3) mental incapacity, and (4) unconscionability. While this Court would require more information to make a conclusive determination, these defenses could potentially be meritorious. Additionally, in light of this Court's finding in the Order setting aside the sheriff's sale that service upon a "caretaker" was insufficient, any prejudice to Plaintiff is outweighed by the fact that Plaintiff did not properly serve Defendants in the underlying *scire facias* action. Lastly, based on the policy of preferring the matter proceed on its merits and the discretion given to this Court in construing Rule 60(b), it appears that granting the motion to set aside the judgment is the appropriate action to take. The weight of the errors is heavy; therefore, this Court must take this course of action.

³*Battaglia v. Wilmington Savings Fund Soc.*, 379 A.2d 1132, 1135 (Del. 1977).

⁴*Id.*

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Based on the foregoing, Defendants' motion to set aside the judgment is *granted*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution